IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.163 OF 2005

Shri Krishna Ranaba Gholse & Anr. ..Appellants

Versus

Shri Dattu Dhondiba Gholse & Ors. ..Respondents

Mr.G.N.Salunke for appellants

Mr.S.S.Redekar for respondents

CORAM : P.V.KAKADE, J.

DATE : 20TH JUNE, 2005.

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by Addl. District Judge, Gadhinglaj dated 3.2.2005 allowing the appeal and setting aside the order passed by Civil Judge, Junior Division, Chandgad dated 30.9.1999 decreeing the suit for perpetual injunction against the defendants.

2. The suit was filed by the plaintiffs for

perpetual injunction against the defendants on the ground that possession in 1/2 share of the suit property was being disturbed by the defendants and hence perpetual injunction was sought for. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiffs had proved their possession on the suit property to the extent of 1/2 share on the Northern side thereof and also proved an obstruction by the defendants to the Wahiwat of the plaintiffs suit property. It was also held that the defendants had failed to establish that they had acquired the entire suit property since 1940 and since then it is in their possession and hence decree came to be passed. The appeal was carried to the Addl. District Court, Gadhinglaj, who after hearing both the parties came to the conclusion that the trial judge had erred in appreciating the evidence and after recording the reasonings allowed the appeal and set aside the order passed by the lower court. Hence the present appeal.

3. At the outset it may be noted that there is absolutely no substantial question of law involved in this appeal. The suit is for perpetual injunction

simplicitor. The learned trial judge in effect had left the issue regarding title open and appears to have decreed the suit on the basis of alleged settled possession in 1/2 property. The lower appellate court judge after embarking upon the enquiry regarding the title of the plaintiffs came to the conclusion that the available evidence on record including the mutation entries as well as oral evidence that nothing was required to inquire into the issue of title as the court must examine whether the person claiming possession of the property had got lawful possession in order to grant injunction. It was further observed that the question of possession presupposes lawful possession and for adjudication of that question whether finally or at interlocutory stage, the inquiry into title, right, interest or status of plaintiff was not required to be done. Therefore on the basis of evidence on record the lower appellate court judge came to the conclusion that the plaintiff was not entitled to the decree for perpetual injunction simplicitor.

4. The learned counsel for the appellant sought to put reliance on the ruling of this Court in the case of **Govindbhai Ramjibhai Chauhan vs. Gokulchand Juthalal**

Agarwal reported in **1996 (2) Mh.L.J. 1062**. However, on perusal of the entire case and ratio thereof vis-a-vis the present scenario revealed from the record, it is obvious that this ruling is not applicable to the present case.

5. I have perused the judgment of both the courts below and must note that the evidence on record is appreciated by the lower appellate court judge in proper perspective and has rightly discarded the plaintiffs case. Be as it may, the fact remains that there is no substantial question of law involved in this appeal and as such the appeal stands dismissed with no order as to costs.

6. Consequently the civil application no.348 of 2005 is also stands dismissed with no order as to costs.